

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

) CASE NO. 5:20CR117

Plaintiff,

)

v.

)

VERNON M. LUSTER,

) Judge John R. Adams

) ORDER

Defendant.

)

)

Pending before the Court is Defendant Vernon Luster's *pro se* motion for compassionate release. Doc. 206. Upon review, the motion is DENIED.

The Sixth Circuit has previously explained this Court's duties and obligations when considering a motion for compassionate release.

Sections 3582(c)(1)'s and (c)(2)'s parallel language and structure compel us to conclude that compassionate release hearings are sentence-modification proceedings and that courts considering motions filed under § 3582(c)(1) must follow a *Dillon*-style test. The three-step § 3582(c)(1)(A) test is as follows. At step one, a court must "find[]" whether "extraordinary and compelling reasons warrant" a sentence reduction. 18 U.S.C. § 3582(c)(1)(A)(i). At step two, a court must "find[]" whether "such a reduction is consistent with *applicable* policy statements issued by the Sentencing Commission." *Id.* § 3582(c)(1)(A) (emphasis added). The Commission's policy statement on compassionate release resides in U.S.S.G. § 1B1.13. *See* U.S.S.G. § 1B1.13 (U.S. Sent'g Comm'n 2018). Thus, if § 1B1.13 is still "applicable," courts must "follow the Commission's instructions in [§ 1B1.13] to determine the prisoner's eligibility for a sentence modification and the extent of the reduction authorized." At step three, "§ 3582(c)[(1)(A)] instructs a court to consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by [steps one and two] is warranted in whole or in part under the particular circumstances of the case."

United States v. Jones, 980 F.3d 1098, 1107–08 (6th Cir. 2020)(citations and footnotes omitted).¹

¹ The sentencing commission has since clarified that § 1B1.13 is in fact applicable to applications filed by prisoners.

In its recently amended compassionate-release policy statement, the Sentencing Commission lists six categories of extraordinary and compelling reasons that may support compassionate release. Those categories are (1) medical circumstances, (2) age, (3) family circumstances, (4) abuse suffered in custody involving a “sexual act” or “serious bodily injury,” (5) “other reasons” similar to those in the first four categories, and (6) an “unusually long sentence.” U.S.S.G. § 1B1.13(b). Such circumstances, according to the Sixth Circuit (speaking before the policy statement), are “most unusual” and “far from common.” *United States v. McCall*, 56 F.4th 1048, 1055 (6th Cir. 2022) (citation omitted). And in any event, district judges retain considerable discretion to determine whether a defendant's reasons are extraordinary and compelling. See *United States v. Jones*, 980 F.3d 1098, 1111 (6th Cir. 2020).

The § 3553 factors referenced in the statute include (1) the nature and circumstances of the offense and the defendant's history and characteristics; (2) the need for the sentence imposed to reflect the seriousness of the offense; (3) the need to protect the public from further crimes of the defendant; (4) the sentencing guideline range; and (5) the need to avoid unwarranted sentence disparities among defendants with similar records guilty of similar conduct. 18 U.S.C. § 3553(a). These factors implicitly allow the Court to consider the amount of time served when determining if a reduction in sentence is appropriate. Also, district courts can consider non-retroactive changes in law relevant to sentencing as part of their weighing the § 3553(a) sentencing factors. District courts are encouraged to be explicit and particular with their factual reasoning when they consider the § 3553(a) factors.

United States v. Brown, No. 1:19-CR-129(2), 2024 WL 987528, at *3 (S.D. Ohio Mar. 7, 2024)(citations and quotations omitted).

Luster appears to raise two arguments in support of his motion. First, Luster contends that life in custody was more difficult during the COVID pandemic and therefore he should receive a reduced sentence. Second, Luster contends that his sister was recently diagnosed with a terminal

illness. Neither argument, however, demonstrates extraordinary and compelling circumstances. Luster's time spent incarcerated during COVID was neither extraordinary nor compelling. While he describes his daily activities being restricted and his risk of infection being heightened, nothing about those circumstances warrants a change to his sentence. Similarly, while the Court has sympathy for Luster being incarcerated while his sister is battling a terminal illness, there is nothing to suggest that Luster is or would be a caregiver for his sister. Rather, Luster would simply like to spend time with her while he is able to do so. Such a fact, however, does not demonstrate an extraordinary and compelling reason to alter Luster's sentence.

Based upon the above, the motion for compassionate release is DENIED.

IT IS SO ORDERED.

December 3, 2024

Date

/s/John R. Adams

JOHN R. ADAMS

UNITED STATES DISTRICT JUDGE